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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 TOLAVIUS TIMMONS,

11 Plaintiff(s),

12 v.

13 LAS VEGAS PUBLIC DEFENDERS
14 OFFICE, et al.,

15 Defendant(s).

Case No. 2:17-cv-02020-RFB-NJK

**ORDER REGARDING APPLICATION
TO PROCEED *IN FORMA PAUPERIS***

(Docket No. 1)

16 This matter is before the Court on Plaintiff's Application to Proceed *In Forma Pauperis*. Docket
17 No. 1. Plaintiff is a prisoner proceeding in this action *pro se*. Plaintiff has submitted the financial affidavit
18 and inmate trust account statement required by 28 U.S.C. § 1915(a)(2). His request to proceed *in forma*
19 *pauperis* would ordinarily be granted pursuant to 28 U.S.C. § 1915(a).

20 Plaintiff's claims arise out of his dissatisfaction with his counsel in his on-going criminal trial in
21 state court, and judicial rulings related thereto. *See* Docket No. 1-1 at 3-8. The relief Plaintiff seeks is both
22 monetary damages and an injunction. *Id.* at 11. It is well settled that a federal district court does not have
23 appellate jurisdiction over a state court, whether by direct appeal, mandamus, or otherwise. *See, e.g.,*
24 *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir.
25 2003). Moreover, the United States Supreme Court has long made clear that absent extraordinary
26 circumstances, federal courts must not interfere with pending state criminal prosecutions even when they
27 raise issues of federal rights or interests. *See, e.g., Younger v. Harris*, 401 U.S. 37, 44 (1971).
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1 Moreover, a threshold requirement for proceeding with any § 1983 claim is that the defendants acted
2 “under color of state law” with respect to the alleged deprivation of the plaintiff’s constitutional rights.
3 *West v. Atkins*, 487 U.S. 42, 48 (1988). It is well established that attorneys, whether retained or appointed,
4 do not act “under color of state law” in representing a plaintiff in a criminal proceeding. *See, e.g., Polk*
5 *County v. Dodson*, 454 U.S. 312, 318-19 & n.7 (1981).

6 If the court grants Plaintiff’s Application to Proceed *In Forma Pauperis*, Plaintiff will be required,
7 under 28 U.S.C. § 1915(b)(2), as amended by the Prison Litigation Reform Act of 1995, to pay the full
8 \$350 filing fee, even if his complaint is dismissed. As set forth above, the Court believes Plaintiff’s claims
9 will not survive the pleading stage. Given these circumstances, the Court will allow Plaintiff thirty days
10 to withdraw his Application to Proceed *In Forma Pauperis*. If Plaintiff does not, the Court will grant his
11 Application to Proceed *In Forma Pauperis*, screen Plaintiff’s complaint, and order that he pay the \$350
12 filing fee in accordance with 28 U.S.C. § 1915.

13 Based upon the foregoing, **IT IS ORDERED** that:

- 14 1. Plaintiff’s Application to Proceed *In Forma Pauperis* (Docket No. 1) is **HELD IN**
15 **ABEYANCE**.
- 16 2. Plaintiff shall have until **August 31, 2017** to withdraw his Application to Proceed *In Forma*
17 *Pauperis*. If he does not, the court will order Plaintiff to pay the \$350 filing fee and screen
18 the complaint pursuant to 28 U.S.C. § 1915.

19 Dated: August 1, 2017

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22 Nancy J. Koppe
23 UNITED STATES MAGISTRATE JUDGE
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